

Substantial Equivalency Implementation Guidance

New York State Education Department

OFFICE OF RELIGIOUS AND INDEPENDENT SCHOOL
SUPPORT

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PART I: Terminology

Some questions may arise concerning the terms used in the substantial equivalence regulation and this guidance. This section, as well as the bolded text in each section below, should clarify the Department's interpretation and use of such terminology.

Bilingual program

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administrative identification number issued to a nonpublic school and assigned to a specific nonpublic school site to recognize such site by the Department.

Substantial equivalency of instruction for a nonpublic school means an instructional program which is comparable to that offered in the public schools and is designed to facilitate students' academic progress as they move from grade to grade (8 NYCRR 130.1[b]). Comparable should include consideration of any artifacts that collectively show that age- and grade-appropriate instruction of suitable depth and breadth is implemented in all mandatory subjects and is designed to facilitate students' academic progress from grade to grade. Substantially equivalent does not mean that a religious or independent school

Pathway 1: Registered High Schools

Registered high schools are nonpublic schools that are voluntarily registered with the Board of Regents under section 100.2(p) of the Commissioner’s regulations. A school is granted “registered” status when it has undergone a process demonstrating that it provides an academic program which allows students at the commencement level to meet the requirements necessary to earn a Regents Diploma. The registration process is outlined on the NYSED website at:

<http://www.nysed.gov/nonpublic-schools/nonpublic-high-school-registration>

Nonpublic schools which have full registration status, and their related elementary and middle schools, are deemed substantially equivalent under the language of the regulation. Nonpublic schools should notify the LSA of their registered status in advance of the December 1, 2023 deadline for LSA’s to report to the Department in this regard (as discussed below).

We note that registration only applies to a particular high school site. As part of the registration process, Department staff visit each location of a school to ensure that the school is meeting the requirements to issue a Regents’ diploma. Registration status can be confirmed through the Department’s SEDREF database:

[https://portal.nysed.gov/pls/sedrefpublic/SED.sed_inst_qry_vw\\$.startup](https://portal.nysed.gov/pls/sedrefpublic/SED.sed_inst_qry_vw$.startup)

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status by the Department, can be found on the NYSED website at <https://www.p12.nysed.gov/nonpub/applicationnpssecschreg/>.

Pending Registered: If a nonpublic school elects the registration pathway but is shown on the SEDREF website as “pending” registration status, the LSA and applicant should contact ORISS for further information. High schools with “pending” registration status may use the registration pathway only if they have been recently visited by NYSED staff, have been deemed to be approvable and are merely awaiting a meeting of the Board of Regents so that full registration status can be conferred. Any other high school with pending registration status (for example, those that still need to provide more information to the Department or have recently changed location and need a new site visit) must choose another pathway.

Pathway 2: State-Approved Private Special Education Schools, State-Operated or State-Supported Schools

State-approved private special education schools and state-operated or state-supported schools were established by the State Legislature pursuant to Articles 85, 87 or 88 of the Education Law.

Information about these schools can be found at:

<http://www.nysed.gov/special-education/approved-private-special-act-state-operated-and-state-supported-schools-new-york>

These schools are automatically deemed substantially equivalent. The Board of Regents noted these schools' ongoing relationships with school district Committees on Special Education and NYSED, as they address the educational and other needs of students with disabilities.

The state-approved, state-operated, or state-supported status of a school can be confirmed through the Department's SEDREF database at:

[https://portal.nysed.gov/pls/sedrefpublic/SED.sed_inst_qry_vw\\$.startup](https://portal.nysed.gov/pls/sedrefpublic/SED.sed_inst_qry_vw$.startup)

Pathway 3: Accreditation

Accreditation is a process through which a school demonstrates to an accreditor, through a rigorous and established process, that its educational program and school management meet certain standards. Under the regulation, accreditation by an approved accreditor is an accepted pathway to demonstrating that a nonpublic school provides instruction that is substantially equivalent. Nonpublic schools may choose to become accredited by a variety of accrediting organizations. Each accreditor has its own mission, emphasis, and standards. Each accreditor also chooses how to apply its own priorities in its accreditation process.

NYSED will not interfere with such priorities and processes accrediting organizations have developed to ensure that schools meet their standards. Under this pathway, the regulation does require that to be approved, the accrediting body must:

- Use a peer review process that includes evaluation by leaders of similar nonpublic schools,
- Appropriately train all staff and peer reviewers who are involved in the accreditation process,
- Accredite based on publicly accessible documented standards,
- Perform a comprehensive onsite visit of any school seeking accreditation while such school is in session,
- Periodically conduct a combination of interim and full accreditation reviews of the nonpublic school which it accredits during at least a ten-year period, and
- Require nonpublic school seeking accreditation to have curriculum that is informed by research, to document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress.

Approved Accreditors: Once an accrediting organization has been approved, NYSED will list the accreditor, its term of approval, and the expiration date of that approval on the ORISS website. NYSED anticipates releasing its first list of approved accreditors by September 30, 2023. We note that approval as an accreditor pursuant to 8 NYCRR 130.3 (a) (3) is separate and unrelated to an accreditor obtaining a Commissioner’s consent to incorporation or a Board of Regents charter for such activity.

Accredited Nonpublic Schools: The nonpublic school should notify the LSA that it has chosen this pathway to be deemed substantially equivalent when the school has completed the accreditation process with an approved accreditor. Both officials from the LSA and the nonpublic school can confirm that the accreditor has been approved on NYSED’s ORISS website.

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Should a nonpublic school opt to use the accreditation pathway to demonstrate substantial equivalence, it will inform the LSA and provide evidence of its term of accreditation, i.e., start date and expiration date of its accreditation. NYSED may seek that information directly from accreditors, if needed.

Provisional Accreditation or in-process accreditation may precede full accreditation from an accreditor and does not satisfy the accreditation pathway unless, based upon the Department's review, the particular status satisfies the requirements of the regulations overall and provides assurance that the intent of the Compulsory Education Law is fulfilled. In any event, materials prepared as part of the accreditation process should be used in the local review process.

For Accreditors:

Gaining NYSED Approval: If an accrediting organization wishes to gain NYSED approval for its accreditation process, it must provide evidence that demonstrates that the organization's process meets the regulatory criteria as outlined above.

Accreditors seeking approval by NYSED can apply to: SEsupport@nysed.gov.

Accreditors should indicate in the application materials whether they use provisional or in-process statuses and whether they propose that such statuses be accepted by the Department for this pathway.

NYSED staff will review the information provided and may seek additional information, which might include NYSED staff members accompanying teams from that accreditor on accreditation visits in New York State schools.

The Department will indicate on the approved list of accreditors whether the accreditor's provisional accreditation is acceptable.

Any prior recognition of an accrediting organization by the Department or Board of Regents for other purposes may be noted on an application but is not in and of itself determinative for approval under this pathway.

Reapproval Cycle: The accreditation organization will be asked to demonstrate that its process remains consistent with the criteria on a regular cycle, every five years.

Mid-Cycle Reviews: Should concerns arise, NYSED may observe the accreditation process and review documents at any time for accreditors

Pathway 4: International Baccalaureate Programs

If nonpublic schools participate in the International Baccalaureate (IB) Program, they will be considered substantially equivalent by the LSA upon notification and submission of evidence it has fully implemented a successful IB program at the school. The LSA can confirm that a school has approved participation in the IB program by reviewing the IB Program website listing at <https://www.ibo.org/about-the-ib/ib-world-schools-yearbook/>. A link to this information will be posted on NYSED's ORISS website.

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Pathway 6: Assessments

Many nonpublic schools, even those that elect not to participate in the 2006-3.6 (6-3e) and 2016-3.6 (6-3445) assessments, are required to assess their students in reading, mathematics, and science. The assessment results are used to monitor student progress and to identify areas where students may need additional support. The assessment results are also used to evaluate the effectiveness of the school's instructional programs and to inform the school's improvement plan.

Approved by the Department

Approved Tests: While the Department develops a comprehensive list of approved assessments, it should be noted that State administered assessments such as Regents exams, 3-8 Mathematics and ELA assessments, Grades 5 and 8 Elementary and Intermediate-Level Science Tests, NYSAA, and the NYSESLAT assessments may be used to demonstrate compliance. The list of approved assessments will be posted on the NYSED website at

Participation Rate:

The current three-year statewide average State assessment public school participation rate will be posted at <https://www.nysed.gov/nonpublic-schools/substantial-equivalency>.

Best Practices of Test Security and Assessment:

Assessments must be administered to students in a manner that is consistent with best practices of test security and assessment. While it is presumed there will be regularity in the testing process, use of this pathway grants the Department, or its designee, the right to review the integrity of the testing process. Concerns may be identified through such means as a credible complaint to the Department about a school's use of the tests, through the normal test analysis process conducted by assessment developers, or by the Department. If a complaint is substantiated, the school may be directed by the Department to use another pathway to determine its substantial equivalence.

Teacher Competence

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- Student grades and/or assessment results (with appropriate privacy protection) or other evidence that the school measures academic progress throughout the year and from grade to grade.

The assembled record should confirm that the curriculum described by the school is comparable to that offered in the public schools and actually delivered to students. The task of the reviewer is to ensure that students of compulsory age are receiving sufficient instruction in the required subject areas to enable them to make progress from grade to grade.

English as the Language of Instruction evidenc(m)-6 (p(fi)-5.1 (rm)]T0 Tc (ur)3 (e)4 (3 (I)-e)4 (de)4 (nc(,))T

Substantial Equivalency Review & Determination Process

For those schools that choose to use the

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patriotism and citizenship could be demonstrated through a review of the social studies curriculum, or

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NYCRR 130.3, LSAs must complete substantial equivalency determinations (and recommendations for schools subject to a Commissioner's determination) for all new schools within two years of when the nonpublic school commences instruction for students in any grades 1-12 and every seven years thereafter.

PART IV: Safeguards

The regulations provide numerous safeguards to ensure that substantial equivalency determinations are fair and accurate. These safeguards include: (1) the ability for the Commissioner to review evidence submitted to the LSA from the nonpublic school demonstrating that it meets a pathway pursuant to section 130.3(b); (2) the complaint procedure outlined in section 130.11; (3) the option for those considering themselves aggrieved by an LSA's substantial equivalency determination to file an Education Law § 310 appeal to the Commissioner pursuant to section 130.12; (4) the Commissioner's ability to review records and/or documentation that an LSA used to make its substantial equivalency determination; and (5) the Commissioner's ability to initiate review of the determination to determine whether it is supported and issue a decision on such pursuant to section 130.13. We offer guidance on a few such safeguards here.

Complaints

Pursuant to section 130.11 of the regulation, the Commissioner has the discretion to direct an LSA or Board of Cooperative Educational Services (BOCES) to investigate a nonpublic school if the Commissioner has cause for concern regarding the substantial equivalency of instruction at such nonpublic school, either based on a complaint or some other source of information. This section does not require the Commissioner to direct an investigation based upon the receipt of *any* complaint, rather, it provides discretion to do so. If the Commissioner receives complaints that are not credible or do not relate to substantial equivalency of instruction, the Commissioner need not direct an investigation under section 130.11. The Commissioner may elect to request records for review in connection with his or her inquiry into the validity of a complaint.

The scope of an investigation pursuant to section 130.11 will be tailored to the nature of the Commissioner's concern about the instruction provided at a nonpublic school. For example, if there is reason to believe that a school fails to provide a physical education program, the Commissioner may direct the LSA to investigate the school's physical education program and determine (or make a recommendation as to) whether this aspect of the school's educational program is substantially equivalent.

An LSA or BOCES that receives a complaint about the substantial equivalency of instruction at a nonpublic school within its geographical boundaries may use its discretion – subject to contrary direction from the Commissioner – to determine whether the complaint has merit and whether an investigation is warranted.

Nonpublic schools demonstrating substantial equivalency through any pathway may be the subject of a complaint and an investigation pursuant to this section.

The Department will investigate complaints about nonpublic schools. If an LSA receives a complaint about a nonpublic school, it should forward such complaint to ORISS for processing.

